

GARY D. FRIEDMAN (*pro hac vice*)
gary.friedman@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8963
Facsimile: (212) 310-8007

PATRICIA H. BENSON (SBN 60565)
phb@msk.com
KARIN G. PAGNANELLI (SBN 174763)
kgp@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for Defendants

SCOTT B. COOPER (SBN 174520)
scott@cooper-firm.com
THE COOPER LAW FIRM, P.C.
2030 Main Street, Suite 1300
Irvine, CA 92614
Telephone: (949) 724-9200
Facsimile: (949) 724-9255

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BERTHA MERCADO, JOSEFINA
GONZALEZ, and PATRICIA
STRUTHERS, as individuals and on
behalf of all others similarly situated,

Plaintiffs,

v.

GATE GOURMET, INC., a Delaware
corporation, and GATE SAFE, Inc., a
Delaware corporation,

Defendants.

Lead Case No. CV07-2305 JHN (CWx)
[Consolidated Case No. CV07-3879
JHN (CWx)]

**FINAL JUDGMENT AND ORDER
OF DISMISSAL WITH PREJUDICE**

1 The Court has received and considered the proposed Joint Class Action
2 Settlement Agreement among Plaintiffs and Defendants (hereinafter the
3 “Settlement Agreement”)¹; has previously granted preliminary approval of the
4 class settlement that provided for conditional class certification; has been informed
5 by declarations that notice of the settlement has been provided to the Class (as
6 defined below); has held a fairness hearing at which all parties appeared by their
7 Counsel and at which the Class Members were afforded the opportunity to object
8 to the proposed settlement; has received and reviewed briefing and evidence as to
9 why the proposed settlement is fair, adequate and in the best interests of the
10 represented class; and has considered all other arguments and submissions in
11 connection with the proposed settlement.

12 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY**
13 **ORDERED, ADJUDGED AND DECREED THAT:**

14 1. The Settlement Agreement and the terms therein are fair, just,
15 reasonable and adequate as to the settling parties, including the Settlement Class,
16 and is hereby finally approved in all respects. The parties are hereby directed to
17 perform the terms of the Settlement Agreement.

18 2. The Settlement Class represented herein by Plaintiffs is defined as all
19 current and former non-exempt employees (i.e., employees paid on an hourly basis
20 and eligible to receive overtime compensation) (a) employed by Gate Gourmet
21 within the State of California at any time during the period of March 7, 2003
22 through October 20, 2010, and (b) employed by Gate Safe within the State of
23 California at any time during the period of June 14, 2003 through October 20, 2010
24 (the “Class” or “Class Members”).

27 ¹ Undefined capitalized terms used herein have the same meaning ascribed to them
28 in the Settlement Agreement.

1 3. In accordance with Federal Rule of Civil Procedure 23 and the
2 requirements of due process, the Settlement Class has been given proper and
3 adequate notice of the Settlement Agreement and the Fairness Hearing, such notice
4 having been carried out in accordance with the Preliminary Approval Order. The
5 Notice and notice methodology implemented pursuant to the Settlement
6 Agreement and the Court's Preliminary Approval Order (a) were appropriate and
7 reasonable and constituted due, adequate, and sufficient notice to all persons
8 entitled to notice; and (b) met all applicable requirements of the Federal Rules of
9 Civil Procedure and any other applicable law. The parties have complied fully
10 with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C.
11 § 1715.

12 4. The Settlement Agreement was negotiated at arm's-length by
13 experienced counsel who were fully informed of the facts and circumstances of the
14 action and of the strengths and weaknesses of their respective positions. The
15 Settlement Agreement was reached after the parties had completed extensive fact
16 discovery and had filed briefs in support of and opposing class certification. Class
17 Counsel and Gate's Counsel are therefore well positioned to evaluate the benefits
18 of the Settlement Agreement, taking into account the expense, risk, and uncertainty
19 of protracted litigation over numerous questions of fact and law.

20 5. The Court finds that the requirements of the United States
21 Constitution, the Federal Rules of Civil Procedure, the Local Rules of the United
22 States District Court for the Central District of California, and any other applicable
23 laws have been met as to the "Settlement Class" defined above, in that, for
24 settlement purposes:

- 25 a. The Settlement Class is cohesive and well defined;
- 26 b. The members of the Settlement Class are so numerous
27 that their joinder before the Court would be
28 impracticable;

- 1 c. The Court finds that there are one or more questions of
2 fact and/or law common to the Settlement Class,
3 including whether the Settlement is fair;
- 4 d. The Court finds that the claims of the Class
5 Representatives are typical of the claims of the members
6 of the Settlement Class;
- 7 e. The Class Representatives will fairly and adequately
8 protect the interests of the Settlement Class in that: (i) the
9 interests of Class Representatives and the nature of their
10 alleged claims are consistent with those of the members
11 of the Settlement Class; (ii) there appear to be no
12 conflicts between or among the Class Representatives
13 and the Settlement Class; and (iii) Class Representatives
14 and the members of the Settlement Class are represented
15 by qualified, reputable counsel who are experienced in
16 preparing and prosecuting large, complicated wage-hour
17 class actions; and
- 18 f. Questions of law or fact common to the members of the
19 Settlement Class predominate over any questions
20 affecting only individual class members.

21 6. Based on the findings set out in paragraph 5 above, the Court certifies
22 the Settlement Class, as defined above, for settlement purposes, under Fed. R. Civ.
23 P. 23(b)(3).

24 7. The Court hereby approves The Cooper Law Firm, P.C., The Carter
25 Law Firm, Jose Garay, APLC, and the Phelps Law Group as Class Counsel for the
26 Settlement Class. Plaintiffs Bertha Mercado, Josefina Gonzalez, and Patricia
27 Struthers are hereby approved as class representatives for the Settlement Class.
28

1 8. The proposed Settlement Agreement warrants final approval pursuant
2 to Federal Rule of Civil Procedure 23(e) because it is fair, adequate, and
3 reasonable to the Settlement Class and others whom it affects based upon (1) the
4 complexity, expense and likely duration of the litigation; (2) the reaction of the
5 class to the settlement; (3) the stage of the proceedings and the amount of
6 discovery completed; (4) the risks of establishing liability; (5) the risks of
7 establishing damages; (6) the risks of maintaining a class action through the trial;
8 and (7) the range of reasonableness of the Maximum Settlement Consideration.

9 9. The Final Approval Motion has been GRANTED, and the Settlement
10 Agreement hereby is APPROVED as fair, reasonable, adequate to members of the
11 Settlement Class, and in the public interest. The parties are directed to
12 consummate the Settlement Agreement in accordance with its terms.

13 10. The application of Class Counsel for costs and attorneys' fees award
14 against Defendants has been GRANTED. Defendants shall pay \$875,000 in fees
15 and litigation costs of \$38,939.49 to The Cooper Law Firm, P.C., The Carter Law
16 Firm, Jose Garay, APLC, and the Phelps Law Group ("Class Counsel"), with the
17 payment to be made as provided for in the Settlement Agreement incorporated by
18 reference. The Court hereby also awards class representative enhancements of
19 \$10,000 each to Bertha Mercado, Josefina Gonzalez, and Patricia Struthers. The
20 class representative enhancement shall be paid in accordance with the terms of the
21 Settlement Agreement. The Class Administrator, Epiq Systems, Inc., shall be paid
22 \$62,825 in accordance with the terms of the Settlement Agreement. No other costs
23 and fees relief shall be awarded, either against Defendant or any related persons or
24 entities or from the award to the Class.

25 11. All Class Members, except those who timely opted out of the
26 settlement, are bound by the instant Final Judgment and Order of Dismissal With
27 Prejudice and by the previously-approved Settlement Agreement. Each Class
28 Member, except those who timely opted out of the settlement, is hereby deemed to

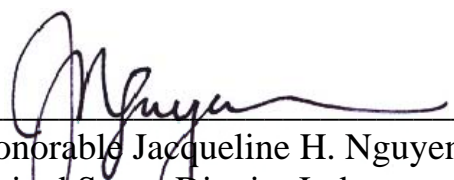
1 have released Defendants and any related parties, as defined in the Settlement
2 Agreement, from the Released Claims described in the Settlement Agreement. The
3 Class Representatives and all members of the Settlement Class, except those who
4 timely opted out of the settlement, on behalf of themselves and the Settlement
5 Class, and their personal representatives, heirs, executors, administrators, trustees,
6 are forever enjoined from prosecuting any Released Claim, as described in the
7 Settlement Agreement. Notwithstanding the foregoing, no Released Party (as that
8 term is defined in the Settlement Agreement), shall seek any remedy for violation
9 of the foregoing injunction by any member of the Settlement Class other than a
10 Class Representative until at least thirty (30) days after having provided such
11 Settlement Class member with written notice of such injunction and demand to
12 desist from any conduct in violation thereof.

13 12. The Settlement Agreement is not, and shall not be construed to be, an
14 admission of wrongdoing by Gate, and this Court makes no such finding or
15 determination. Neither the Settlement Agreement nor any of the proceedings in
16 connection therewith shall be offered or received in evidence for any purpose,
17 except that Gate may submit this Final Order and Judgment to the extent Gate
18 believes it supports a claim of res judicata, collateral estoppel, release or any
19 theory of claim or issue preclusion, or it may submit this Final Order and Judgment
20 in any action to enforce the injunctive provisions of paragraph 11.

21 This action is hereby dismissed on the merits with prejudice. The Court shall retain
22 jurisdiction of this action for the purpose of resolving any disputes that may arise
23 as to the implementation of the monetary relief terms of the Settlement Agreement.

24 **SO ORDERED.**

25 DATED: April 27, 2011



Honorable Jacqueline H. Nguyen
United States District Judge